effectual. But when the officer has thus undertaken to convey a particular title, and the purchaser takes the title so conveyed, none other will pass by the deed. That manifestly conveys only the title of M. Yendo, and those claiming under him. But the plaintiffs do not claim under Manuel Yendo, and consequently the deed does not profess to convey to the purchaser their right.

We conclude that the assessor's deed was inoperative to divest the plaintiffs of their title; not only because of the invalidity of the assessment, but because the deed did not convey the title of the plaintiffs, and consequently that the court erred in excluding it from the jury. The court also erred in refusing the instructions asked by the plaintiffs, and in overruling the motion for a new trial.

The judgment must therefore be reversed, and the cause remanded.

LEGAL MISCELLANY.

LEGAL PRINCIPLES.

No. IV.

It will give us a clearer view of some of the foregoing propositions, to look at them in the light of one or two cases. Perhaps we cannot better illustrate the truth, that what a judge says, in pronouncing an opinion, is not strictly authority, nor always reliable, though his legal conclusion be correct, than by the leading case on the proof of marriage, *Morris* vs. *Miller*, 4 Bur. 2057; 1 W. Bl. 632. This was an action for criminal conversation; and it become necessary, therefore, for the plaintiff to establish his marriage to the lady, with whom the illicit intercourse was alleged to have been committed by the defendant; and the point decided was, that evidence of matrimonial cohabitation and repute was not sufficient, but that what is called a marriage in fact must be proved. The same conclusion has been arrived at by every court, English and American, that has ever had occasion to decide the question, down to the present day. It is correct, beyond all doubt. The

same rule prevails in indictments for adultery, polygamy, and the like; but in other cases, generally, the marriage is sufficiently proved, *prima facie*, by evidence of cohabitation and repute.

The reason of the distinction is obvious. The law always presumes, that every man leads an innocent and moral life, unless the contrary be shown in the particular case. If, therefore, two persons are living together as husband and wife, professing and reputed to be married, the law, which must of necessity presume, either that they are in fact married, or else that they are criminal and immoral persons, adopts, *prima facie*, the former conclusion; that is, regards them innocent. But, in an action for criminal conversation, the plaintiff's own claim is, that both he and defendant have been holding a commerce with one woman, such as could be innocent in neither out of the matrimonial connection. This being proved, both parties cannot be innocent; and so the law must hold its judgment, that is, its opinion which of them is married, in suspense, until some controlling evidence is introduced. The same reasoning applies in indictments for adultery and polygamy.

Now, in stating the opinion of the court in *Morris* vs. *Miller*, Lord Mansfield, if we may rely on the reports we have of his observations, said, that if the evidence of cohabitation and repute, *which proceed from the party's own act*, were taken as sufficient, it "might render persons liable to actions founded upon evidence made by the persons themselves who should bring the action." This remark, of a most learned and accomplished judge, true in itself, yet not of the smallest possible consequence—a fact, but not a legal reason—has since been mistaken by numerous judges, and, as far as our observation has extended, by all the text writers on evidence, for the principle on which these adjudications proceed. But how do we know this is not the principle, when so many men have said it is? Simply by the fact, that in all issues, where the difficulty we stated above does not intervene, the law permits a party to prove his own marriage by his own cohabitation. And where the issue, of married or not, arises in the trial of indictments for polygamy and adultery, and so the cohabitation is the act of him *against* whom it is offered, it no more establishes his marriage,

than if he were *himself to offer* the evidence in an action against a third person for criminal conversation. All this appears, too, in the very case of *Morris* vs. *Miller*, if we are to take observations of judges for law; for there, it is also said, that evidence of cohabitation and repute is sufficient in all cases, but indictments for bigamy, and actions for criminal conversation.

If we were to enter upon a course of fault-finding with judges, living and dead, we might blame them for saying so many things that are not law; but a more considerate view will show us, that the full force of their minds is directed to arriving at right *results;* and that it is too much to ask of them, that everything they say should be said with the precision which ought to attend the text of an elementary author. But the writers of law treatises should be more careful; they have not the excuse which judges have, and they are understood to aim at greater exactness. They would exercise more care than sometimes they do, if it were not for the too prevalent, erroneous opinion, that they are entitled to shelter themselves behind the words of great judges. J. P. B.

SELECTION OF RECENT ADJUDGED POINTS IN EQUITY.

Account of Back Rents—Possession against Infant.—As a general rule in cases of adverse possession, where there is no trust, no infancy, no fraud, no suppression, but a mere bona fide possession, it is not the course of the Court of Chancery to carry back the account of rents beyond the filing of the bill. *Pulteney* vs. *Warren*, 6 Ves. 93; *Edwards* vs. *Morgan*, 1 M'Clel. 541. Whoever enters upon the estate of an infant, is held to have entered *as bailiff or guardian*, and the subsistence of the relation thus created by the entry, draws with it the right to a back account from the time of the entry into possession, though by mistake. *Drummond* vs *The Duke of St. Albans*, 5 Ves. 433, may be considered as overruled. *Hicks* vs. *Sallitt*, 3 De Gex, Mac. & Gord. 782.

Husband and Wife—Equity to a Settlement—Husband Foreigner domiciled abroad—Domicil whether material.—In this case a motion was made before Sir J. Stuart, V. C., that a sum of £2,623 11s. 11*d.*, which had, in an administration suit, been carried to the separate account of a married lady—a German domiciled with her husband at Frankfort—should be paid to her husband. An affidavit was produced, to the effect that no settle-